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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/347,525	07/06/1999	MASAHARU OKU	103778	3980

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EXAMINER

KNABLE, GEOFFREY L

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 03/05/2002

10

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/347,525

Applicant(s)

OKU ET AL.

Examiner

Geoffrey L. Knable

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 December 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4 and 6-15 is/are pending in the application.
- 4a) Of the above claim(s) 7 and 9-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6, 8 and 13-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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1. Applicant's election with traverse of group I, species B (now claims 1-4, 6, 8 and 13-15) in Paper No. 9 is acknowledged. The traversal is on the ground(s) that there is no serious burden to examine all the groups in one application as the search would encompass all embodiments and both groups. This is not found persuasive because for the reasons noted in the last office action, there is considered to be a significant search and examination burden to examine claims to both groupings in the same application, it being again stressed that the apparatus claims have significant different potential alternative uses that would require significant additional search and examination. Further, the different species differ substantially. It is agreed however that upon allowance of a generic claim, rejoinder of non-elected species would be considered as appropriate.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 7 and 9-12 withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention/species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 9.

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1, 2, 6, 8 and 13 are rejected under 35 U.S.C. 103(a) as obvious over Deist (US 3,170,499) taken alone or further in view of Hanson (US 2,849,049) and Okada (US 6,039,826).

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Deist is applied for substantially the same reasons set forth in the last office action, it being again stressed that this reference explicitly indicates that an extruder can be used in place of the mills/calenders, the feed to the extruder being controlled to adjust the compositions. Applicant has argued that if one were modifying the Deist apparatus to use extruders, then "five separate extruders would be employed to ensure that feed to each component of Deist occurred in the same fashion as if mills and a calender were employed" and that "a hypothetical extruding means used in place of the calender in Deist would not "create a blend" of rubber material as in the claimed invention, but rather, would receive a blended product from a blending mill or another extruder." This argument has been carefully considered but is unpersuasive. First, even assuming that applicant's analysis here is correct (although it is not believed to be for reasons to be detailed below), it is not even clear that the claims would define over such a process. In particular, even if the ordinary artisan provided five extruders (which they likely would not), the blending would still be occurring in an extruder and it is not seen how the present claims would define over this. Further, and more importantly, why would the ordinary artisan feed different rubber materials to an extruder to form a blend and *then feed this blend to another extruder* as argued by applicant? It is submitted that such would have been an unlikely and certainly unobvious adaptation of the Deist teachings. Finally and most importantly, applicant has ignored the second embodiment of Deist (fig. 2) in which a *single* blending/calendering device is used, the feed to the device consisting of controlled feed from a plurality of hoppers. In following the teachings of Deist to alternatively use extruding means, the most logical and obvious

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adaptation of this embodiment would be to use a single extruding means with a controlled feed from a plurality of hoppers (such being considered in fact to be very similar to what is illustrated in applicants fig. 1). Applicants arguments on this point are thus unpersuasive.

As to the overlapping of edge portions of the bands, as noted in the last office action with respect to claim 5, although Deist does not provide specifics of the strip winding process, it is again submitted that it would have been readily apparent to the ordinary artisan that the strip in Deist is or would or should be wound in overlapping form on the tire support, it being noted and considered that in strip winding of treads, adjacent edges of successive windings are *almost always typically overlapped (as is well known)*, this therefore being either implicit or certainly obvious from the reference teachings. In other words, it is submitted that the ordinary artisan reading the Deist teachings would have certainly appreciated that the strip would almost of necessity have to be wound in overlapping edge form to achieve any useful product. Applicant has argued that "even if such were the case", there has been no showing that it would have been obvious and that the reference does not provide any guidance. This argument has been considered but is unpersuasive and to the extent it constitutes a seasonable challenge to the examiner's "well known" statement, the Hanson and Okada references have been added. First, while Deist does not provide explicit guidance on how the strip is to be wound, the reference is implicitly urging that it be wound in a conventional manner and in a manner which yields a useful product, which as noted in the last office action is considered to be with overlapped edges. In other words, it is

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submitted that the ordinary artisan would have been expected to understand that a diamond shaped band would almost necessarily be wound in overlapping form, the alternative (thin diamond edge to diamond edge?) being clearly unworkable for building any sort of useful tire product. Further, to the extent that applicant is challenging the statement from the last office action that overlapping in strip wound treads is well known, the references to Hanson and Okada have been optionally added to this rejection in response thereto, these references clearly evidencing the conventional nature of overlapped edges in strip wound treads (e.g. note fig. 5, col. 2, lines 45-51 and col. 5, lines 25-30 of Hanson and the figures of Okada; note also that the reference to Hanson is even referred to in the Deist patent as suggesting suitable conventional strip winding techniques).

5. Claims 3, 4, 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deist (US 3,170,499) as applied in the last office action.

6. Applicant's arguments filed 12-17-01 have been fully considered but they are not persuasive.

Applicant's arguments with respect to the Deist rejection have been considered and addressed within the statement of rejection above. The arguments with respect to the Okada rejection have been considered and are persuasive, this rejection having been withdrawn.

7. Applicant's amendment/apparent challenge<sup>1</sup> necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.**

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<sup>1</sup> See MPEP 2144.03

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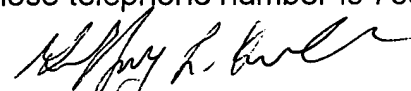
See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Geoffrey L. Knable whose telephone number is 703-308-2062. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael W. Ball can be reached on 703-308-2058. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651.



Geoffrey L. Knable  
Primary Examiner  
Art Unit 1733

G. Knable  
February 28, 2002